

DATE: October 31, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 07-03596

**DECISION OF ADMINISTRATIVE JUDGE
CHRISTOPHER GRAHAM**

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 26-year-old software developer employed by a federal contractor. He used marijuana an average of two times per year from 1995 to 2003. Since then he has demonstrated his intent not to abuse any drugs in the future by disassociation from drug-using associates and contacts, changing the environment where drugs were used, and an appropriate period of abstinence. He successfully mitigated the security concerns about drug involvement. Clearance is granted.

STATEMENT OF THE CASE

On March 29, 2006, Applicant submitted a Security Clearance Application (SF 86).¹ The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, DOHA issued a Statement of Reasons (SOR) on July 10, 2007, detailing the basis for its decision – security concerns raised under Guideline H (Drug Involvement) of the Directive. The President issued revised adjudicative guidelines (Guidelines) on December 30, 2005. DoD implemented them on September 1, 2006. Pending official amendment/reissue of DoD Directive 5220.6, the Guidelines are to be used in all cases when the SOR is dated on or after September 1, 2006. Because the SOR was issued after September 1, 2006, DoD policy requires that this case proceed under the revised guidelines.

Applicant answered the SOR in writing on July 23, 2007, and elected to have a hearing before an administrative judge. DOHA assigned the case to me on August 29, 2007, and issued a Notice of Hearing on September 6, 2007. I convened a hearing on September 28, 2007, to consider whether it is clearly consistent with the national interest to grant or continue Applicant's security clearance. The government offered two exhibits, marked as Exhibits 1-2. Applicant offered six exhibits, marked as Exhibits A-F. All exhibits were admitted without objection. The government filed one rebuttal exhibit marked as Government Rebuttal Exhibit 1, and without objection it was admitted. DOHA received the transcript (Tr.) on October 9, 2007.

FINDINGS OF FACT

Applicant admitted the allegations contained in the SOR. The admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 26-year-old software developer employed by a federal contractor.² He is single, earned a bachelor's degree in biochemistry and neurobiology/physiology, is about 70% complete with studies for a master's degree in systems engineering, has no prior military service, and he has held a security clearance since 2002.³

¹Government Exhibit 1 (Security Clearance Application (SF 86), dated March 29, 2006).

²Tr. at 39.

³*Id.*

Applicant used marijuana, 16 times, from approximately May 1995 until at least May 2003. Included in this usage was three times use of marijuana after receiving a security clearance in January 2002. His marijuana use occurred between the ages of 19 and 27.⁴

Applicant has not smoked marijuana since May 2003.⁵ He attributed his use to hanging out with the wrong crowd, and not having the strength of character and self-guidance.⁶ Since May of 2003, he has followed a solid career path, and maintains a stable relationship with a woman who is successful in her own career. He is now more circumspect about the company he keeps, and avoids this type of conduct.⁷ He is pursuing his advanced degree in systems engineering for the past three and one-half years, with a focus on architecture based systems integration.⁸ He moved away from (over 100 miles) the environment where his marijuana usage occurred. He showed remorse, and stated his intent to not use drugs in the future.⁹

A retired naval officer was Applicant's supervisor from November 2004 until May 2006. Applicant provided reliable, dedicated, full-time, quality work performance for her. He was dependable and never showed any discrepancies associated with being a drug abuser. She stated that his disclosure of marijuana use on his security clearance application demonstrated his integrity because in this case, that truthfulness came at great personal cost.¹⁰

Applicant's college friend and roommate from 1999 to 2006 stated that in the social circles they encountered in college, a culture of substance usage existed. Being friends in college they socialized frequently, and he never saw Applicant smoke marijuana. He never saw him use marijuana the entire time they lived together.¹¹

A fellow graduate student who takes the same courses with Applicant stated that as a devout Muslim, his religion regards that he should only be friends with people who are honest and just, and he considered Applicant to have these characteristics. Applicant is a hard worker, and a man of integrity. As one who holds a security clearance, he believed Applicant possessed the attributes to be trusted with a security clearance.¹²

⁴*Id.* at 49.

⁵*Id.* at 43.

⁶*Id.* at 44.

⁷*Id.* at 44-45.

⁸*Id.* at 45.

⁹*Id.* at 45-46, 70-71.

¹⁰*Id.* at 19.

¹¹*Id.* at 29-30.

¹²*Id.* at 33-34.

POLICIES

In an evaluation of an applicant's security suitability, an administrative judge must consider the "Adjudicative Guidelines for Determining Eligibility For Access to Classified Information" (Guidelines). In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into Disqualifying Conditions (DC) and Mitigating Conditions (MC), which are used to determine an applicant's eligibility for access to classified information.

These guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process.¹³ An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge considers all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.¹⁴

Specifically, an administrative judge should consider the nine adjudicative process factors listed at Guideline ¶ 2(a): "(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence."

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."¹⁵ In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, facts must be established by "substantial evidence."¹⁶ The Government initially has the burden of producing evidence to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the Government has produced

¹³Guideline ¶ 2.

¹⁴Guideline ¶ 2(c).

¹⁵Guideline ¶ 2(b).

¹⁶"Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

substantial evidence of a disqualifying condition, the burden shifts to Applicant to present “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”¹⁷ The burden of disproving a mitigating condition never shifts to the Government.¹⁸

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The scope of an administrative judge’s decision is limited. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism.¹⁹

CONCLUSIONS

Guidelines ¶ 24. The Concern. Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and

(2) inhalants and other similar substances;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

Guidelines ¶ 25. Conditions that could raise a security concern and may be disqualifying include:

¹⁷Directive ¶ E3.1.15.

¹⁸See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005): “The Administrative Judge considers the record evidence as a whole, both favorable and unfavorable, evaluates Applicant’s past and current circumstances in light of the provisions of the Directive, and decide[s] whether Applicant has met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

¹⁹Executive Order 10865, § 7.

(a) any drug abuse (see above definition); and

(g) any illegal drug use after being granted a security clearance.

The government established its case under Guideline H (Drug Involvement.) Applicant's use of marijuana, and his use of marijuana after being granted a security clearance are the applicable Drug Involvement Disqualifying Conditions (DI DC) under Guidelines ¶ 25 (a) and (g).

Guidelines ¶ 26. Conditions that could mitigate security concerns include:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) a demonstrated intent not to abuse any drugs in the future, such as:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used;

(3) an appropriate period of abstinence;

(4) a signed statement of intent with automatic revocation of clearance for any violation;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Guidelines ¶ 26 (c) and (d) are not applicable. There is no evidence of abuse of prescription drugs, nor did Applicant attend a prescribed drug treatment program. Applicant's stated use of marijuana over an eight year period amounts to two times per year. That is not evidence of a habitual user. His last use was 4 ½ years ago and since that time, he has demonstrated a more responsible attitude about his activities. He moved away from the city where his drug use occurred. He has new associates. He stated his intent not to use drugs in the future. He is pursuing his master's degree. He provides competent work for his employer and has maintained a steady relationship with a successful woman, all of which indicate maturity. I believe this conduct is not likely to occur again, and does not cast doubt on his current reliability. He has demonstrated his intent not to use in the future. I find Guidelines ¶ 26 (a) and (b) applicable, and conclude Guideline H for Applicant.

Whole Person Analysis

“The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance.”²⁰ “Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”²¹ In evaluating Applicant’s case, I have considered the adjudicative process factors listed in the directive.²²

I considered his age, his education, his employment, and his sporadic drug use. Applicant listed his drug use in his security clearance application. This is positive because candor with the government about a person’s negatives is the crux of a trustworthiness determination. If a person discloses the adverse information about himself, it supports the notion of trustworthiness. However, Applicant needs to understand that illegal use of drugs raises questions regarding an individual’s willingness or ability to protect classified information. Moreover, impaired ability while under the influence of marijuana increases the risk of an unauthorized disclosure of classified material. Here, Applicant has demonstrated a desire to not use drugs in the future. He has made significant changes in his life.

The United States has a duty to protect itself from unauthorized disclosures of classified information and place the utmost trust in those persons to whom it grant access to classified information. Applicant has matured, and shown that he can lead a drug-free life. The totality of the record raises no reasonable and persistent doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. I base this finding on his credible and sincere testimony. After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude Applicant has mitigated the security concerns pertaining to drug involvement.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline H:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant

DECISION

²⁰Directive ¶ E2.2.1.

²¹*Id.*

²²*Id.*

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Christopher Graham
Administrative Judge